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January 12, 1999

Ms. Carol Matthey  
Chief, Policy & Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 544  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: CC Docket No. 96-115: CPNI Electronic Safeguards

Dear Ms. Matthey:

Per your request, this will summarize the points that I made on behalf of the CPNI Coalition in our *ex parte* meeting on January 8, 1999 (see formal *ex parte* letter and written proposal that were filed at the FCC on January 11, 1999). In the pending petitions for reconsideration in this docket, virtually all carriers had challenged the Commission's *CPNI Order*<sup>1</sup> adopting rules imposing electronic safeguards, namely, (i) flagging, and (ii) electronic auditing. 47 C.F.R. Sections 64.2009(a) and (c).

The purpose of the flagging requirement (Section 64.2009(a)) is that carrier personnel engaged in marketing activities are able to determine customer CPNI approval status in order to use, or refrain from using, CPNI to market products and services outside of the service category to which the customer subscribes (*i.e.*, local, interexchange, and CMRS). As demonstrated by the record, the flagging requirement is problematic and costly for various carriers, both large and small. For example, although most AT&T's consumer databases can quite readily accommodate a first screen flag, its business customer systems cannot. Moreover, some smaller carriers do not use electronic databases. Also, many carriers have databases that contain customer records from only one service category and plan to use that database to offer services within that one service category to their existing customers, thereby negating the need to flag the accounts in that

<sup>1</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27, released February 26, 1998 ("*CPNI Order*").

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database. Thus, an inflexible first screen flag rule is not a cost-effective solution to the Commission's goal of ensuring that carriers do not misuse CPNI.

The CPNI Coalition's proposed modification of Section 64.2009(a) effectuates the goal of the Commission's flagging rule in a less burdensome and more effective manner. Specifically, it requires each carrier to establish guidelines that direct its marketing personnel (*i.e.*, any personnel engaged in marketing) to determine a customer's CPNI approval and service subscription status prior to using CPNI for out-of-category marketing. It further requires that the approval and status information be available, either electronically or in some other manner, to marketing personnel in a readily accessible and easily understandable format. Thus, the Coalition's proposed modification would permit carriers to use a first screen flag, a centralized database or non-electronic means, whichever is most cost-effective for the carrier and its particular business unit. At the same time, the Commission's policy goal of ensuring that carriers do not misuse CPNI is carried out by the requirements that (i) carriers direct that the customer's CPNI approval and service subscription status be determined prior to use of CPNI for marketing a product or service outside of the service category to which the customer subscribes, and that (ii) this information be made available by the carrier to its personnel engaged in marketing in a readily accessible and easily understandable format.

The Commission's electronic auditing requirement (Section 64.2009(c)) would require carriers to electronically track access to individual customer accounts. This requirement would generate massive and senseless data storage requirements, which in MCI WorldCom's estimation would cost it alone \$1 billion annually. Other carriers also estimated costs associated with this requirement to run into the hundreds of millions of dollars - - an expenditure without any demonstrated offsetting consumer dividend or need.

Accordingly, the CPNI Coalition suggests that the purpose of the electronic auditing rule, namely, to track how CPNI is used, could be better effectuated by the proposed modifications to Sections 64.2009(c) and (e). The revised electronic auditing rule (Section 64.2009(c)) would require each carrier to maintain a file, either electronically or in some other manner, of its marketing campaigns that use CPNI, that includes a description of the campaign and the CPNI that was used in the campaign, its date and purpose, and what products and services were offered as part of the campaign. This record would show how the carrier was using CPNI in its outbound and inbound marketing efforts and provide the means to investigate should a dispute or complaint occur.

Section 64.2009(c), coupled with the proposed clarification of the officer certification requirement (Section 64.2009(e)) that would require each carrier to establish an internal compliance oversight function to monitor ongoing CPNI compliance efforts and conduct an annual CPNI compliance review, ensures that the Commission's goal that access to CPNI is appropriate is met. The proposed rules accomplish this by testing through the internal oversight process whether the carrier's CPNI training has been effective and its employees are using CPNI consistently with the substantive requirements of the Commission's rules. Thus, under the CPNI Coalition's proposal, the more limited tracking


under Section 64.2009(c) is offset by an internal audit under Section 64.2009(e). This audit, instead of compiling billions of useless bits of access data regarding individual accounts under the Commission's electronic auditing rule, actually tests the efficacy of the carrier's CPNI compliance program.

The CPNI Coalition also proposed two other revisions to Section 64.2009(e): (i) changing "corporate officer" to "officer," and (ii) eliminating the requirement that the officer have "personal knowledge" of the carrier's CPNI compliance. Some smaller carriers are sole proprietorships, partnerships or cooperatives, rather than corporations. For larger carriers, the officer certifying CPNI compliance would rarely have personal knowledge but rather is likely to rely on the input from company managers. Removing the personal knowledge requirement is consistent with this fact as well as with typical attestations that require certification "to the best of my knowledge, information and belief."

Finally, the CPNI Coalition made the point that it is not surprising that there is no widespread consumer group interest in the electronic safeguards aspect of the Commission's CPNI proceeding. First, most carriers have been dealing responsibly with CPNI for decades, and there is no outstanding consumer privacy issue to be addressed. Second, the electronic safeguards requirements are internal carrier compliance mechanisms that do not directly implicate areas of consumer interest such as the type of CPNI notice consumers receive from carriers concerning their CPNI rights and the form of approval that the consumer provides the carrier. Third, there are other rules that impact consumer privacy, such as the Caller ID rules (Section 64.1200), that have worked well where the Commission has set forth the substantive privacy protections but has not sought to create a blueprint for how the carrier uses its systems to effectuate compliance.

For all of these reasons, the CPNI Coalition strongly urges the Commission to take action to eliminate the inordinately costly electronic auditing and first screen flag requirements of the *CPNI Order*, in favor of the proposed alternatives that achieve the Commission's public policy objectives without unnecessarily burdening carriers and their customers.

Sincerely,

  
Judy Sello

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